**SHOULD IT CONTINUE TO REMAIN IMPERMISSIBLE FOR THE UK TO USE TORTURE, AS A MEANS OF OBTAINING INFORMATION FROM SUSPECTED CRIMINALS?**

Student ID number: 1736135

Dissertation Supervisor: Dr Melanie Collard

**This dissertation is submitted for the degree of LLB of Brunel University –**

**(2020) This dissertation is entirely my own work and all material from**

**other sources, published or unpublished, has been duly acknowledged and**

**cited.**

**-------------------Raheema Mohamoud------------- --------26/03/2020-----------------**

**(Signature of Student) (Date)**

**Acknowledgements**

I would like to acknowledge the support and guidance of my supervisor, Dr. Melanie Collard, and thank her for the endless time, consideration and support she has provided me with throughout the year. It would not have been possible without her and the wider departments assistance. Also, I would like to acknowledge and thank my family and friends for their support throughout the year.

**Abstract**

This dissertation aims to assess the three chosen aspects of study, historical, legal and theoretical perspectives in determining whether evidential law should continue to prohibit torture as a means of obtaining confessions or information. Part 1, historical perspectives, will examine the origins and jurisprudence of judicial torture, what rules governed its use, the status it held in medieval English law, theories for and against torture and case studies that exhibited medieval torture in action. Part 2, legal perspectives, will, firstly, examine our current domestic law’s stance towards torture and evaluate the effectiveness of those laws and judgements, as well as, examining what effect the ‘war against terrorism’ has had on the law. Secondly, Part 2 will discuss the stance international law has taken towards state terrorism and assess this against state security. Part 3, theoretical perspectives, will include a discussion for and against the ticking bomb scenario, including reference to the slippery slope argument, Abu Ghraib and the Israeli Landau Model of torture.

**Contents Page:**

|  |  |
| --- | --- |
| Introduction | 1--2 |
| Section 1: Historical Perspective | |
| Origins and Evolution of torture in Law | 3-5 |
| Rules and Jurisprudence of Judicial Torture | 6-8 |
| From Torture to Jury | 9-11 |
| Torture in England | 12-13 |
| The case of William Monke | 14-15 |
| Section 2: Legal Perspective | |
| Domestic Law on Torture | 16-17 |
| Critique | 18-21 |
| International Law on Torture | 22-23 |
| Critique | 24-25 |
| Section 3: Theoretical Perspective | |
| Ticking Bomb Scenario: For vs Against | 26-31 |
| Slippery Slope Argument | 32-33 |
| War on Terror | 34-36 |
| The Abu Ghraib case study | 37-38 |
| Model of Torture: Israeli Landau Model. | 39-41 |
| Conclusion | 42-42 |

**INTRODUCTION:**

The fundamental question of this thesis is, should it continue to remain impermissible for the United Kingdom to use Torture, as a means of obtaining confessions from suspected criminals, such as terrorists.

Judicial Torture (JT) is defined by Langbien, as harm inflicted upon an accused by state officials, sanctioned by the state and judiciary, for the sole purpose of extracting information, relevant to a crime committed, or, a confession uncovering their part in the crime they committed[[1]](#footnote-1) . For the purpose of this dissertation the same definition will be used, discussed and evaluated throughout this thesis.

Prior to its historical prohibition, torture methods were sanctioned by courts across Europe and respected as a reliable pillar of evidential law, however, due to societal, religious and cultural changes, it was increasingly seen as an abhorrent practice that proved itself to be unreliable in delivering accurate information, resulting, in a wave of illegalisation across Medieval Europe. Post-world war two, domestic and international law dictated that state sanctioned torture was absolutely prohibited, under any and all circumstances, leading to approximately 156 countries , including the UK, entrenching this prohibition into their domestic law, setting a new standard for human rights law around the world[[2]](#footnote-2). Though, this has not quieted down the discussion between philosophers, legal practitioners and academics throughout the 19th, 20th and 21st century, debating whether torture should continue to remain illegal under all those circumstances, or, is there a circumstance that justifies the use of torture.

This thesis aims to explore all the discussions above, from the, Historical perspective in Part 1, which will delve into the origins, jurisprudence, changes in the law and the role of torture in medieval English law, in order to determine whether the prohibition of torture, implemented then, has posed as a benefit or hindrance to our law today. The Legal perspective in Part 2, will discuss domestic and international law’s stance towards torture, identifying what effect the, relatively recent, ‘war against terrorism’ has had on domestic law’s anti-torture stance, assess whether international anti-torture laws present themselves as a hindrance to state security and evaluate the strengths and weaknesses of both. Finally, the theoretical perspective in Part3, will include a theoretical discussion of the Ticking bomb scenario, analysing arguments for and against legalising torture, the slippery slope argument, war on terror, the Landau Model of torture, Abu Ghraib and the Utilitarian perspective of state sanctioned torture. Here, there is a need to evaluate the strengths and weaknesses of each argument in its ability to support or argue against the thesis question, as well as comparing the Landau model of torture to our law today to determine whether we should adopt a similar approach or maintain our prohibition. From this discussion, this thesis will conclude by either claiming that the law should change to incorporate torture under certain circumstances or remain the same.

Relevant research for this thesis, was gathered from monographs, case law, judgements and court decisions, statutes and international conventions, Law reports, articles, websites and newspaper articles.

**Section 1: Historical Perspective on Torture.**

An inspection of 12th and 13th century medieval European law, indicates that the use of state sanctioned torture to retrieve information from the accused started with the Roman-Canon Inquisitorial tradition in Italy and quickly spread through Europe as they embraced, albeit, to varied degrees, the use of torture to obtain information, into their legal system[[3]](#footnote-3).

**Origins and Evolution of Torture in Law:**

The first recorded incident of JT in Europe was in 1252[[4]](#footnote-4), where Pope Innocent IV authorized the torture of the papal inquisitor of Lombardy for a murder, he was suspected of committing. The Pope’s statement of ‘suspects needing to be coerced….into confessing their errors and accusing others’[[5]](#footnote-5), accurately captures the perspective medieval society, institutions and the law had of torture, (vastly contradictory to our current view of its abhorrence), it was seen as a necessity to obtaining evidence in order to achieve a fair trial.

According to Langbien’s book, *Torture and the Law of Proof[[6]](#footnote-6)*, during the pre-inquisitorial period, the law was highly influenced by the status and honour of defendants, if they had a higher social, financial and familial status, they were not subject to torture, contrary, to those lower down the hierarchy who were subject to JT. Post-inquisitorial tradition, however, indicated a new age, recognising the emergence of an ‘objective’ law of proof as a staple of medieval law around Europe, where torture became the equalizer between social classes within society and was described by the Pope, as a ‘reliable method to obtain accurate information that aids police investigation’[[7]](#footnote-7).

Geary disagrees with Langbien, stating that the tradition of torturing and mutilating the less privileged parts of society has always been a defining and distinctive part of Roman law , pre and post inquisitorial tradition. He describes it as a ‘normal and even necessary’[[8]](#footnote-8) tool used during the interrogation of unfree witnesses, surfs and the accused, undermining the claim that an inequitable application of the law only existed pre-inquisitorial period, when rather, it was a defining factor which characterized Roman Law around Europe[[9]](#footnote-9) and continued to do so even after the enlightenment period.

Its origins, as indicated above through the statement of Pope Innocent, stem from the biblical perspective that the state is empowered by God to maintain social hegemony and prevent anarchy[[10]](#footnote-10), this gives them the validity they need to torture or punish suspects as ‘agents of Gods will’[[11]](#footnote-11). They believed that through their use of torture they could invoke God’s judgement and God would actively intervene to make the truth is known to the courts, through the suspects confession of guilt.

The most notable reform writers provide an accurate account of societies views and concerns regarding the use of JT, like Fouracre and Herstal, who argued mostly from the perspective that the law and courts are too lenient on suspects and need to take a much firmer hand in extracting confessions and delivering justice, concluding that JT was not harsh enough and enabled suspects to evade justice. Completely contrasting the accounts of Baccaria and Voltaire, who argued from the standpoint of the numerous reports of injustice committed by the court through their torture of innocent men[[12]](#footnote-12). Theodulf of Orleans, on the other hand, attempts to merge the two, arguing that both injustices are a product of the other, when judges are too lenient with certain suspects, this causes other judges to be too harsh on other suspects, concluding that the whole system of torture should be ‘done way with’ as it creates a volatile legal system[[13]](#footnote-13), making him one of the first writers to argue against JT, both on a practical perspective and a theological one, as he states that ‘no punishment prescribed by Roman law or coercion enforced upon suspects as a result of JT derives from the Bible’[[14]](#footnote-14).

**Rules and Jurisprudence of JT:**

The importance of JT centres around how courts cannot convict a suspect accused of a crime without a clear and consistent confession proclaiming their guilt to accompany the strong corroborating evidence, in the form of 1 eye-witness testimony or circumstantial evidence, collected by the prosecution. In this instance, the corroborating evidence is only ‘half-proof’[[15]](#footnote-15) of what is needed to convict, and the confession obtained under torture is the other ‘half-proof’ needed to consolidate and secure a conviction from the courts, neither are sufficient alone[[16]](#footnote-16). In practice, if an eye-witness can account for the suspect committing the crime but the accused refuses to confess, the court can issue a judicial torture warrant that allows the suspect to be interrogated under torture until they provide a confession that is consistent with the corroborating evidence. Karras argues that the benefits of this legal method is the existence of a threshold requirement, resembling the rule of probable cause, obligating the court to have at least the ‘half-proof’ (of an eyewitness testimony) before resorting to torturing suspects. Thus, preventing the possibility of innocent people being tortured and, allowing a mixture of evidence to support their conviction, as opposed to just their confession[[17]](#footnote-17). This provides some semblance of boundaries that regulate JT in medieval law, so that it produces the best possible outcome, whilst protecting the rights of innocent civilians.

Webb argues in his book, *A History of Torture in Britain*[[18]](#footnote-18), that this semblance of a boundary is, however, weakened by the prosecutorial nature of the Inquisitorial procedure, which intrinsically had a bias in favour of prosecuting that has led to the courts presuming that suspects were guilty until proven innocent, leading to many being wrongfully tortured, with no recompense, as shown below. Nevertheless, contrary to the common belief that JT was lawlessly applied, there were parameters placed around the use of torture, for example, that ‘it should not cause loss of life or limb, it should only be used ‘once and as a last resort’[[19]](#footnote-19), the court must first consider the corroborating evidence to be ‘virtually certain that he committed the crime’[[20]](#footnote-20) before torturing him, the court must also determine that a crime had been committed first (referred to as inquisition generalis[[21]](#footnote-21)) for the purpose of safeguarding the accused, suggestive questioning is strictly forbidden, torture is only applied to cases of capital crime, a threat of torture needs to be made first, before carrying out the act and lastly, exempting the old and vulnerable from torture.

Scott cites some advantages to these parameters, firstly, that the prohibition of suggestive questioning means that suspects need to rely on their own recollection of the crime, indicating that they must have played a significant part in committing the crime to recall it so precisely. Secondly, the courts must determine that a crime was committed and review all corroborating evidence , and lastly, the threshold requirement, which must prove virtual certainty of their guilt[[22]](#footnote-22), all resulting in a set of stringent rules and guidelines to protect the integrity of evidential law by ensuring that the means of obtain information is reliable and, ultimately, can aid the court in protecting the innocent and punishing the guilty.

Additionally, the highly publicized McMartin case[[23]](#footnote-23) indicates that interrogations under JT could provide more precise and accurate information than some interrogations conducted by police officials in current cases. The McMartin case investigated accusations of sexual assault and rape of children in preschools around America, however, since police interrogations were riddled with extreme suggestive questioning, positive reinforcement if the children corroborated the police’s story and feeding the answers to the children before interrogation questioning began, it led to multiple false accusations being made and no convictions[[24]](#footnote-24). Suggesting, at least on the surface, that the rules and guidelines which govern the use of JT, particularly, making sure a crime was committed, ensuring virtual certainty and no suggestive questioning, produces much more reliable information during interrogations than some current cases, which are riddled with false confessions and suggestive questioning.

Andrews[[25]](#footnote-25) rejects his claim, as he argues that medieval cases, like Monke and Jean, indicate the complete opposite, that innocent men have certainly been criminalised and severely tortured by the state under these same guidelines[[26]](#footnote-26), proving them to be ineffective at protecting the accused, mirroring Webb’s argument above. Furthermore, when considering our current legal standing (against judicial torture) and the importance placed on a fair trial and the right to silence, it would massively contradict the values of evidential law, if JT was reinstated.

**From Torture to Jury:**

Through 1694, philosophers, legal practitioners and writers publicised their work against the use of judicial torture, most notably Beccaria, Voltaire and Fortescue, who uncovered the inherent weaknesses within the jurisprudence of torture. They used notable cases of abuse of power committed by the state and the horrid consequences this had on innocent mens lives, to move their readers, who ranged from powerless men to the monarchy, to critique the reliability and validity of JT and invoke their conscience, ethics and morality to stand against the method of torture and, ultimately, abolish its use forever[[27]](#footnote-27).

The French philosopher, Voltaire, examined the case study of Jean Calas as an integral case to support his argument for the abolition of torture in his book, *the Treatise on Torture*, where he intervened and campaigned for Jean Calas’ conviction of murder to be overturned, stating that Jean succumbed to confessing in order to end the pain of torture, not to confess to murdering his son, Marc[[28]](#footnote-28). This resulted in the court later finding Jean not guilty of murder, albeit, after Jean died of torture with no recompense. Causing Voltaire to conclude that the ‘half proof’ status of confessions under torture renders it only half true[[29]](#footnote-29). Geary argues the same in his book, but with different reasoning, as he asserts that each suspect’s recollection, due to a period of time passing, will likely be vague, coupled with pressure or pain, is expected to be inaccurate, therefore, is totally useless[[30]](#footnote-30). This point of view was further echoed by Napoleon Bonaparte, as he criticised the method as being ‘pointless’[[31]](#footnote-31), suggesting a ban, and the Major-General of the time agreed, considering it ‘contrary to reason and humanity’[[32]](#footnote-32). Answering the dissertation question, as the accounts of leaders, philosophers and legal practitioners indicating its ineffectiveness and abhorrence, are clear reasons for why our current evidential law is better suited without torture.

Ultimately, due to Voltaire’s and others account, coupled with the rapid growth of the Humanism theory in the 17th century and the 1689 English Bill of Rights[[33]](#footnote-33), torture was abolished[[34]](#footnote-34).

In Graefe’s book, *Tribunal Reformation[[35]](#footnote-35)*, and Baccaria’s essay, *Crime and Punishment[[36]](#footnote-36)*, both add on to Voltaire’s criticism of, half proofs being only half true, by arguing that, since it is only half true, it should be unnecessary, especially, considering ‘corroborating evidence is virtually certain’[[37]](#footnote-37). Beccaria also criticises torture from the utilitarian perspective Bentham uses to support JT, arguing that the act of torture does not produce the best possible outcome for the most people, considering it results in inaccurate information and, in Beccaria’s words, ‘perverts the will of the accused’[[38]](#footnote-38), resulting in a miscarriage of justice, not beneficial to the public. Beccaria’s stance against JT is, however, undermined by his point that in rare instances it should be used by the court, when they see fit and in a proportionate way[[39]](#footnote-39).

Langbien criticises the argument, that it was the work of these theological and legal thinkers that, ultimately, led to the abolishment of JT and adoption of jury trials. He argues that, since these accounts of injustice, like the case of Jean Calas and many more, had been widely known and accepted for decades, he contends, along with Foucault, that the change can be attributed mostly to ‘the development of a system of free judicial evaluation of evidence’[[40]](#footnote-40) which rendered torture as a law of proof unnecessary. Foucault further states, that the change from torture to jury had only partly derived from the collective change of conscience, but, primarily derived from a ‘shift in the technology of power’, away from exerting force on the body, per se, and towards exerting societal pressure through incarceration, hence the reduction in corporal punishment and rise in prisons. This is a much more convincing argument to explain the shift from torture to jury, as it was more likely due to a revolution, in the way in which punishment was inflicted rather than due to a shock of conscience[[41]](#footnote-41).

Nevertheless, the 4th Lateran Council and the monarch of that period outlawed judicial torture and replaced it with jury trials permanently.

**Torture in England:**

Although, there is little legal and theoretical analysis on instances where torture was used by the court in England, the limited research on the topic has indicated that judicial torture was used, albeit, not as frequently, systematically or harshly in English law as Roman cannon law. Even Though, it was not a staple of English law, certainly, torture was used and administered by English courts, as both Sir Thomas Smith and Sir Edward Coke ordered suspects to be interrogated under torture and Langbien states in his book, an approximate number of 80 cases from 1540-1640 where the monarch or Privy Council ordered suspects to be interrogated under torture[[42]](#footnote-42).

The most notable and prominent work on this topic comes from David Jardine, who researched and published a short monograph in 1837, detailing the position the court took towards judicial torture in England, using case studies of that period, privy council registers and the state papers domestic[[43]](#footnote-43). His research found that, contrary to Lord Thomas Smith’s claim that torture was not used in English law, it was used several times and, as stated above, sometimes sanctioned by Lord Thomas Smith himself, however, it did not constitute a fundamental aspect of English evidential Law, as it was rarely used in criminal cases[[44]](#footnote-44). According to Langbien, torture was issued by English courts in two instances, firstly, like in roman cannon law, to extract a confession from a suspect under the same rules and procedures above, or secondly, where the defendant refused to plea, to which the court issued a torture warrant to force him to plea his innocence or guilt to the crime, then proceeded to a jury trial to examine the evidence against him and reach a conclusion, to convict or acquit the accused. Accounts in Langbien’s book, show that the torture method issued by the court could, at times, lead to the death of the accused before a trial ever happens, suggesting that, although, it was not systematically used, it was just as harsh as Roman Cannon Law.

Nevertheless, when England abolished it in 1640, jury trials became the primary mode of procedure replacing JT[[45]](#footnote-45).

Lord Coke made an important statement regarding the courts use of JT, asserting that ‘there is no law to warrant torture in this land, nor can they be justified by any prescription being so lately brought in’[[46]](#footnote-46), firstly, answering the dissertation question, of whether English Law could ever reinstate judicial torture, to which his opinion was an outstanding no, and secondly, he argues that no court has ever interpreted the royal prerogative to include the right to issue torture warrants. This is significant because the court were only exercising a power conferred to them by the monarchy, for example, interrogators were able to torture with immunity from the law only because the power to do so was conferred to them by royal prerogative. However, if the monarchy has no right to torture, as it is not a part of their prerogative, then courts have no right to sanction torture and interrogators have no right to practice it or receive immunity from the law. Therefore, although Lord Coke acknowledges that torture was used by the courts, he argues that they really had no right to sanction its use[[47]](#footnote-47). Stauford agrees with Coke’s view, as he emphasises that torture was not cited as one of the royal prerogative powers by Francis Bacon in the treatise[[48]](#footnote-48).

**The case of William Monke:**

The case of William Monke is a vital case that sheds light on the devastating risks associated with reinstating judicial torture and the immunity provided by the court to investigators when a suspect is tortured.

The case consisted of Monke being accused by Mr and Mrs Blackborne of high treason, leading the Privy Council to issue a torture warrant for Mr Monke to be interrogated to confess to his crime. Monke was subsequently tortured upon the rack, rending him completely disabled and unable to provide for his 9 children and wife, all whilst maintaining his innocence. After the damage was done and injury was inflicted, the investigation uncovered that the claims made by the Blackborne’s were maliciously falsified and Monke was not guilty of any crime. The interrogators, however, could not be criminalised for their act due to the immunity they enjoy as a result of the warrant and the Blackborne’s did not satisfy the express requirements of battery or trespass in order to warrant prosecution, had Monke pursued a trial. So, ultimately, nothing was done to the Blackborne’s or the interrogators for their crimes[[49]](#footnote-49).

This case can be compared to recent cases of former Guantanomo Bay detainees, who have been raising civil claims against the UK government for participating or knowingly allowing torture interrogations to happen by US officials on British citizens. One of them being Shaker Aemer, who was detained, under the wrongful suspicion that he was a member of Al-Qaid’ah, and subsequently tortured to provide information to support the state during the war on terror period. Although, torture is illegal, no officials or commanders were ever personally convicted of a crime of torture. The only contrast between both cases are that, the one concerning Aemer led to some accountability, as compensation was issued by the state for their crime, producing some positive outcome. But, the similarities between them are abundant, as both cases illustrate that state torture, whether used then or now, leads to the abuse of innocent people and does not produce information that is accurate or reliable[[50]](#footnote-50). Therefore, proving that the prohibition of torture in current English law, would not benefit from reinstatement, as it should remain illegal.

**Section 2: Legal Perspective on Torture**

**Domestic law on Torture:**

Currently, English domestic law has illegalised torture under the following statutes, section 134 of the Criminal Justice Act (CJA)[[51]](#footnote-51), which prohibits the act of torture by state officials when executing their duties, and under the Police and Criminal Evidence Act (PACE) section 76(2)a[[52]](#footnote-52), which illegalises confessions obtained under torture or oppression and ensures that any evidence which could, beyond a reasonable doubt, have been obtained by torture, is strictly inadmissible in court. This sets a clear standard that, firstly, there is an obligation on the state to prohibit any act of torture by state officials, and secondly, no evidence obtained, or could have been obtained by torture, will be accepted by the courts under any circumstances[[53]](#footnote-53).

Additionally, the United Kingdom has an obligation to not deport foreign nationals to their homeland if, there is a high risk that they may experience torture, inhumane or degrading treatment by their state, this obligation was acknowledged in the Human Rights Act 1998 (HRA) section 3[[54]](#footnote-54), which has been steadily relied upon to protect foreign nationals against deportation, when there is a risk of state torture. This is especially relevant because it entrenches the positive obligation states have, to actively prevent the use of torture in other countries, by not deporting them back into the hands of their torturer[[55]](#footnote-55). An application of this can be seen in the infamous case of Abu Qatada v Secretary of State for Home Department[[56]](#footnote-56), where a radical preacher, who, according to the HRA could not be deported due to the ‘high risk’ that evidence obtained by torture, from two key eyewitnesses, would be used in his trial in Jordan to criminalise him. Resulting, in a dozen British senior judge’s ruling against the state’s deportation, forcing the UK to keep him in the country and release him at high bail conditions[[57]](#footnote-57).

Subsequently, an attempt to deport them, contrary to s3 HRA, could be appealed to the higher courts and eventually the European Court of Human Rights (ECtHR), as seen in the case of Chahal v United Kingdom[[58]](#footnote-58), where the UK tried to deport Chahal to India for terrorist activity, however, the ECtHR rejected this, as it violated Article 3 of the convention[[59]](#footnote-59) and the court concluded, like Abu Qatada, that his alleged involvement in terrorism was irrelevant, since the protection afforded by Art.3 is absolute, regardless of conduct. The case of Pinochet 1999[[60]](#footnote-60) and Ron Jones v Saudi Arabia[[61]](#footnote-61) goes further, by establishing that there is no criminal immunity from the law for foreign heads of state if they participate in torture[[62]](#footnote-62).

**Critique:**

Despite the prohibition of torture shown above, s.134 of the CJA indicates a defence for the use of torture by state officials, cited in subsection 4[[63]](#footnote-63), where they may have ‘…lawful authority, justification or excuse for [torture]’[[64]](#footnote-64), which will render their act of torture permissible according to law. This is problematic because it undermines the ‘absoluteness’ of the anti-torture provision and allows the state to still exercise control over whether their officials will be held accountable for their crime of torture or not, effectively, giving them a ‘back door exit’ by eliminating liability for their crime under this defence[[65]](#footnote-65). Ambos[[66]](#footnote-66) argues that Subsection 4 creates a loophole in the general anti-torture law, which at best, can act as a very small loophole, which is made even more limited by the court’s applying it very strictly. Or at worse, it provides a ‘back door exit’ for the state to justify its act of torture in ticking bomb scenarios. Moreover, considering the language used in the defence (to ‘excuse’ or ‘justify’), it is counter-productive to the purpose of the provision, as it lends legitimacy to the abhorrent torture practices, it was supposed to prohibit, which at its worst, reflects Nazi Germany’s justification of using torture[[67]](#footnote-67).

Furthermore, regarding the infamous Abu Qatada case, he was eventually deported back to Jordan against the will of the ECtHR and domestic courts, indicating an attempt by the state to derogate from anti-torture provisions, for the sake of ‘state security’[[68]](#footnote-68). This suggests that the pendulum, at least for the government, has swung away from, protecting individuals from torture and preserving their right to a fair trial, and more towards, prioritising the protection of the state from the suspect. Likewise, the Secretary of State argued in favour of deportation, because it was safer for the state than keeping him[[69]](#footnote-69). But, perhaps, this decision was further influenced by the pressure to protect the public from the persuasion of a radical preacher, especially in light of the war on terror, pushing the Special Immigration Appeals Commission (SIAC) to weigh up his right to a fair trial, against, public safety and security, concluding that, state security superseded his rights. Resulting, in the state relying on a memorandum of understanding (MoU), as an unconvincing substitute, to fulfil their obligation of securing a fair trial[[70]](#footnote-70). Turning the State into corroborators that enable torture in other countries.

Fortunately, making the courts the only protective shield for people to rely on, against the government. This is indicated in the appeal of the case of A and others v Secretary of State for Home Department[[71]](#footnote-71), where Lord Hoffmann dismissed the government’s argument, that it was permissible for the HRA and ECHR to be derogated in circumstances that ‘threaten the life of the nation’, to which Lord Hoffman argued, was not fulfilled in this instance and was impermissible, rendering the government’s act, unconstitutional.

When the necessary question of, whether the fruits of ill-gotten evidence could be admitted into British courts, was examined in the House of Lords case, A and Ors v Secretary of State for the Home Department[[72]](#footnote-72), Lord Hope’s obiter statement was that, if it could not be proven that the evidence has been ill-gotten, through torture, then it may be admitted into UK courts. Conversely, Lord Bingham counters, that if there is a chance or doubt as to how the evidence was obtained, it should be excluded as evidence in UK courts. The majority of Law Lords, concluded, that it was impermissible to use evidence that was questionably obtained, affording permission for Liberty and Redress, to intervene in the previous 2004 Court of Appeal’s judgement[[73]](#footnote-73), which stated that evidence obtained by torture was permissible in British courts. Maintaining the stance that torture is illegal, despite, some alternative opinions from Lord Hope and the Court of Appeal.

Lastly, the government’s negotiation of MoU with countries to deport suspects, to where torture is known to be used, if the country agrees that they will not torture, nor, use evidence obtained by torture to criminalise the suspect in their courts[[74]](#footnote-74), has been criticised as contradicting the HRA, because it holds this country to a lower obligation, than the positive one they are expected to follow. According to, non-governmental organisations, such as JUSTICE and Human Rights Watch, have attempted to intervened in the case of Secretary of State for the Home Department v OO[[75]](#footnote-75), to argue that MoU cannot be depended upon, in the same way it was in Abdul Khakov v Russia, where the MoU proved to be reliable[[76]](#footnote-76). Contrary to this, however, it is the responsibility of the SIAC, along with the court, to find a reasonable balance between the public’s best interest and individual’s right in cases like OO, resulting, in MoU’s being necessary to the state, just as long as it is regulated by the SIAC and the court. Though, the principle, of torture and its fruits being illegal, continues to stay the same.

To summarise, despite the states attempt to use the term ‘state security’ loosely enough that it will enable deportation, as well as the defence in s134(4) of the CJA, the continuous debate of whether evidence obtained dubiously will be accepted, has led to the resounding answer that it will not be allowed, as stated above by Lord Bingham. Therefore, the anti-torture stance the UK has had for several decades, has not been watered down and will unlikely to ever be.

The period of the ‘war on terror’ significantly impacted the application of the HRA (as seen in the case of Abu Qatada), where a balance must now be struck between protecting the rights of the individual and public interest (especially considering the security threat 9/11 and 7/7 posed). So, despite, the deportation of Abu Qatada, which can be considered an outlier amongst most cases, judgements, appeal judgements and statutory provisions point away from reinstating judicial torture and towards protecting individual’s right to a fair trial.

**International Law on Torture:**

Generally, international treaties, conventions and declarations, like the European Convention of Human Rights[[77]](#footnote-77), United Nations Universal Declaration of Human Rights[[78]](#footnote-78), and the International Covenant on Civil and Political Rights[[79]](#footnote-79) set an absolute precedent that torture, which is defined in the UN Convention against Torture (UNCAT), as being ‘any act which intentionally causes severe pain…(physical or mental)…for the purpose of obtaining evidence from them… with the consent of a public official…acting in an official capacity’, will never be allowed under any circumstances[[80]](#footnote-80), (including war[[81]](#footnote-81), public emergency or terrorist act[[82]](#footnote-82)). The prohibition of torture has commonly been described as customary international law[[83]](#footnote-83), as countries are ultimately bound by it, irrespective of its ratification.

The cases of Yuzepchuk v Belarus[[84]](#footnote-84) and Kitenge v Democratic Republic of Congo[[85]](#footnote-85) indicates the no-tolerance approach international institutions have taken towards the state’s use of torture. These standards have set a positive and negative obligation on countries, requiring them to, firstly, illegalise torture in domestic law, absolutely, and secondly, not enable its use as a third party[[86]](#footnote-86) (by deporting suspects at risk of torture[[87]](#footnote-87)). As a result, Parliament and domestic courts have a responsibility to illegalise, investigate, punish and provide reparations for victims of state abuse[[88]](#footnote-88), otherwise, the state will be taken to task for not fulfilling their international obligation to their citizen’s[[89]](#footnote-89).

**Critique:**

Article 1.1 of the UNCAT, establishing exactly what ‘torture’ is, it excludes any torture which may stem from a lawful sanction, from falling under the definition of torture, or prohibited as an act of torture[[90]](#footnote-90). So, if an act of torture was considered to fall under the criteria of a ‘lawful sanction’, then despite the harm or damage caused by the state official in their duty to obtain information, the act is not considered to be torture, and is therefore, legal.

According to Sifreis, in his *Freedom, Torture and International Human Rights*[[91]](#footnote-91) book, this is problematic because states could then permit their officials to use torture, so long as ‘it is inherent in lawful sanctions’[[92]](#footnote-92), leading to a watering-down of the ‘absoluteness’ of the prohibition of torture, making its provisions less reliable, as its illegality becomes a matter for debate[[93]](#footnote-93). The case of Jalloh v Germany[[94]](#footnote-94) tries to set a universal definition of torture, by indicating that a ‘minimum level of severity’ and a holistic view is required to determine whether an act is considered torture or not[[95]](#footnote-95). Unfortunately, still not providing the guidance on what ‘a minimum level of severity’ means, leaving it to member states to decide, resulting, in a varied approach to anti-torture laws and no uniformity in the law. The case of Republic of Ireland v The United Kingdom[[96]](#footnote-96) supports this, as the courts found that the ouns first lies with the state, as they are in the best position to decide[[97]](#footnote-97). The threat here, however, is that it may indirectly allow torture to be happen. Though, this is unlikely as Art19 enables the court and the commission to keep states within the scope of the UNCAT.

From the outset, it could be argued that international anti-torture laws present themselves as a hindrance to protecting state security[[98]](#footnote-98). But, comparing this claim against instances like, the torture of Abdel-Hakim Belhaj[[99]](#footnote-99), it is clear to see that the prohibition of torture, either by domestic or international law, does not hinder state security (because state security is not aided by torture or its fruits)[[100]](#footnote-100).

The formative wording of s134(4) CJA and Art1.1, that either ‘excuses [or] justifies’ torture or does not define it accurately enough, would benefit from a reform that precisely echoes the stance complementary case law takes towards torture[[101]](#footnote-101) and reflects the *jus cogens* view international organisations have of torture[[102]](#footnote-102).

**Section 3: Theories of Torture**

Despite, international organisations not having a working definition of Terrorism[[103]](#footnote-103), Yugal Ginbar describes Terrorism as a ‘person wilfully engaged in attacks…targeting civilians, whose only ‘culpability’ is their perceived ethnic, religious…identity in an effort to kill them to forward some political or ideological aim’[[104]](#footnote-104). If we use this working definition, there is a uniform agreement that states will never use torture to obtain a confession[[105]](#footnote-105) or to support the prosecution[[106]](#footnote-106) of a terrorist, especially, not in circumstances Dershowitz describes as, the Ticking Bomb Scenario (TBS).

**TBS: For vs. Against:**

According to Dershowitz, the TBS is a theoretical scenario wherein a terrorist has hypothetically planted a bomb or has knowledge of an imminent terrorist attack that will lead to the death of many innocent people, in response, should the authorities torture him to retrieve the information needed to dismantle the bomb and save the lives of innocent people[[107]](#footnote-107)? This consequentialist argument can be applied on a macro-scale to countries who may face a similar theoretical threat. They could torture the terrorist to obtain information that will save the lives of thousands of their citizens, or, refrain from torturing him (due to its absolute illegality), or, criticise the theoretical scenario for being unrealistic, as, in reality, we may not know whether a suspect really is a terrorist[[108]](#footnote-108), or whether torture will produce reliable information to stop the impending attack, arguably, rendering it a pointless question.

The TBS originates from Bentham’s 1804 essay, *Means of Extraction for Extraordinary Occasions*, where he argues, who would refuse to use excessive torture on an individual, planning a violent attack that will kill hundreds of innocent people, with the intention of obtaining information that, if acted upon, could stop the mass murder of people?[[109]](#footnote-109). Additionally, Larteguy referred to this scenario in his book, *Les Centurions[[110]](#footnote-110)*, but with the following conditions: 1) the evidence obtained from torture would fulfil the conditions for a conviction, 2) accurate information would be provided if, and only when, the suspect is tortured, 3) there is a ‘ticking’ timer, 4) the quantity of people at risk of death, greatly outweighs the safety of the one suspect being tortured, and 5) the torture is qualitatively less worse than the damage incurred by the bomb. Based on this, legal philosophers, Lawyers and Judges and academics, like Allison, Walzer and Posner use a utilitarian perspective[[111]](#footnote-111) to support the use of torture in TBS’s[[112]](#footnote-112). As, Walzer states that ‘even a good man’ must use torture, against his own beliefs, if that is what must be done to prevent the life-ending explosion.

This goes further with Lincoln, as he argues that the politician who refuses to use torture for the benefit of the majority, is worthless[[113]](#footnote-113), or Posner who argued in, *The New Republic[[114]](#footnote-114)*, that if torture is the only means by which information, that would save the lives of hundreds, could be obtained, then ‘torture should and will be used….No one who doubts [the necessity of torture] should be in a position of responsibility’[[115]](#footnote-115). Indicating a massive support from legal practitioners and academics, in favour of torture from the utilitarian perspective, even if it is disproportionately extreme, just as long as the outcome (of saving lives) can be achieved. Taking on a ‘Machiavellian’ approach to the state’s responsibility of protection, implying that it is not only acceptable, but necessary for the state to adopt an immoral solution to the TBS, to maintain and protect individual’s lives[[116]](#footnote-116).

However, this creates a dichotomy, whereby the state becomes just as ‘morally evil’ as terrorists and where it insults and derogates the principles and morality of society and its institutions to resort to torture. Disregarding the foundations of morality that underpin law, where harm, imprisonment or punishment should not be caused before a trial and under no circumstances should the state consider torture. Jean supports this view, countering Posner point, by arguing that ‘the state has a responsibility to utilize any [and only] morally justifiable means at their disposal to protect innocent people’[[117]](#footnote-117). Jean also argues against the utilitarian argument, criticising their justification of torture (which is based on numbers), from the standpoint of deteriorating societies morality and ethics. She continues, that even the slightest use of torture, will cause harm to our democratic values[[118]](#footnote-118), turning us into the same terrorists we fight against. Bagaric, on the other hand, counter her point, by stating that if an ultimatum was ever provided between ‘a relatively smaller harm’ inflicted on one individual, or, death of hundreds of people, ‘it [will] verge on moral indecency to prefer the interests of the wrongdoer’ over that of the innocent collective[[119]](#footnote-119). Walzer finds a balance between them both, by supporting the states use of torture in TBS’s, so long as the state is willing to acknowledge their wrongdoing and guilt in using such a method. He goes further by stating that, although, limitations to the law should exists and be respected and followed, we should ‘empower our state leaders’ to protect us, by any means necessary[[120]](#footnote-120). This distinguishes Walzer’s view from Posner’s, as the former uses the utilitarian approach to excuse state torture, whilst the latter uses utilitarianism to justify it[[121]](#footnote-121). Sorell reiterates Walzer’s view, that the state must always be prepared to sanction torture ‘if the threat to public safety is big enough’[[122]](#footnote-122), as even, a prohibited act needs to be reconsidered, given the right circumstances.

Moreover, based on Hare’s 2 Level Morality theory[[123]](#footnote-123), Buckler argues that there needs to be a distinction between public and private morality. Private morality should never justify torture in any circumstances, but, public morality should allow torture for the sake of public safety. Therefore, the sates ability to torture, based on public morality, should not derogate private morality’s stance against torture[[124]](#footnote-124). Both can co-exist separately without contradicting each other. That being said, he diverts away from traditional utilitarianism, by agreeing that, at times, limits should be placed on public morality, regardless of the benefits limitless law would have for the collective in TBS’s[[125]](#footnote-125).

This is interesting as it diverts from the general view of morality, where torture is wrong, replacing it with a more complicated ‘Two-Tier’ perspective of morality, where certain things are either right or wrong based on circumstances, who is acting (the state or individual) and what the consequences are, all whilst appreciating that the act, in isolation, would be wrong, but, is excusable in TBS. Based on this understanding, the exceptions found in s134 and Art1.1 is understandable, even if this is not their stance.

Hare’s Two Level Morality and Walzer’s perspective are sophisticated models, that, frankly, is easier to digest than other perspectives, like, Parry’s view that torture is, not just excusable, but justifiable[[126]](#footnote-126), or Hobbs and Kant’s Social contract approach, where leaders have ‘ultimate authority and the citizenry not right to oppose it’ leading to a very dictatorial state[[127]](#footnote-127), or the Utilitarian approach that would allow the torture of innocent people for the collective’s benefit[[128]](#footnote-128), which based on this, justifies the slippery slope argument.

Kemnitzer and Segev oppose Hare’s theory, arguing that, a distinct difference needs to be made between the individual facing an unanticipated emergency, that causes them to, justifiably, take actions that may be morally wrong to protect themselves from a threat they never expected, nor, are equipped to deal with, and the state having the expertise, personnel and equipment[[129]](#footnote-129) to handling a threat of this magnitude, therefore, should not be in a position where they are ill-prepared and need to take unreliable and extreme courses of action to fulfil their duty to protect the public. Kemnitzer referred to this, attempt to justify state torture on bad preparation, as the Institutionalization trap. Kemnitzer further adds that state departments should be fully equipped and prepared to spring into action, using the training and resources they have, to prevent the death of hundreds, using a method that has been proven to be reliable and accurate.

The TBS can be criticised for excluding all other ‘non-torture’ methods that could achieve the same result, making the reader resort to the worst means of obtaining evidence when there are easier, more effective and less abhorrent methods available[[130]](#footnote-130). According to the research cited in Ginbar’s book, *Why Not Torture Terrorist’s*, most non-violent interrogation techniques are effective and have proven themselves to produce accurate information[[131]](#footnote-131). An example, of this can be seen in the February 2002 incident where a bus driver stopped an attack from a man with explosives attached to him, attempting to kill everyone in the bus, by pushing the suicide bomber out of the bus[[132]](#footnote-132). Albeit, this incident does not accurately reflect the TBS, but it indicates that there are other means to preventing mass deaths, which could be more effective than torture. On the other hand, this is not a criticism of the TBS, as torture is only supported in this instance because, it is the only means by which information can be extracted (Larteguy condition 2) otherwise, torture would be completely prohibited.

**Slippery slope argument:**

According to supporters of the slippery slope argument, torture should continue to remain illegal even in TBS’s, as it will, inevitably, lead to it being used much more widely, frivolously and harshly[[133]](#footnote-133), with none of the original boundaries or limits placed around it, maintaining it. Sung asserts this in her article*, Torturing the Ticking Bomb Terrorist*, that legalising state torture in TBS’s, will lead to a ‘widespread and routine use’ of it, as the boundaries start to relax, and it is used more frequently and lightly by the state[[134]](#footnote-134). Yugal also expresses that no boundary placed around JT can limit it to produce, just the desired outcome (of saving lives), whilst, preventing the undesired ones. Therefore, all of it should remain illegal.

Non-profit human rights organisations, like Liberty[[135]](#footnote-135) and Amnesty International, take the view that a torture warrant, limited to just TBS’s, is unrealistic, as the likelihood is that, torture will become a tool used frivolously by the state on a marginalised and labelled minority group. An article from the *Economist*[[136]](#footnote-136) supports this further, as they argue that any boundary placed around torture would ‘erode’ eventually and torture will be used mercilessly, leading to the perversion of our legal, medical and social institutions as well as our collective morality, fulfilling the ultimate goal of the terrorist[[137]](#footnote-137).

To counter, Clarke argues that there is no real evidence to indicate this outcome. Therefore, it should be taken as theoretical, as opposed to realistic. Though, Rodley would say the same for the TBS[[138]](#footnote-138).

The Gafgen[[139]](#footnote-139) case comes the closest to recreating the TBS, as the case concerned, the kidnapping and ransom of a child, and the German police threatening to torture the kidnapper to reveal the whereabouts of the child, whom at that point, was already killed. Once the confession was obtained, the German courts rendered it inadmissible, because it was obtained under duress. Ultimately, convicting the kidnapper, without the use of a confession, but failing to save the child[[140]](#footnote-140). This displays how the TBS would operate, where the multiple factors out of their control, makes it impossible to protect innocent civilians. Excluding the numerous people’s lives at risk, this mirrors the TBS and shows how torture, or the threat of it, is not capable of stopping an attack and saving people’s lives, lending legitimacy to Rodley’s criticism that the TBS is unrealistic[[141]](#footnote-141).

**War on Terror:**

We cannot assess the creditability of torture, as a method of obtaining information, without considering the ‘War on terror’ period.

Borum argues that there is no credibility, nor, evidence that even indicates that torture, used by the state, is effective in delivering reliable information or a confession sufficient enough to secure a conviction[[142]](#footnote-142). This can be seen, when Saudi Security forces were interrogating possible Al-Qai’idah members to obtain information about the 9/11 attacks, and found that ‘some terrorists could be made to cooperate through the use of clerics’ convincing them that their motivations are not in line with commonly shared belief systems, causing them to voluntarily submit valuable information that proved to be much more reliable than the information obtained by torture[[143]](#footnote-143). Suggesting that interacting with their ideological beliefs produces a better outcome than torturing does.

On the other hand, this notion has been heavily criticised as it expects officials to make sense of the corrupt ideological and political reasons terrorists hold, under the assumption that the terrorist’s aggression is misguided and, if only, spoken to, he would do better. When probably, their conviction is so unyielding that no humane treatment or reasoning can stop his attack. Parry argues that the state has no responsibility to reason with their aggressor, their only responsibility is to protect their citizens, under any circumstances[[144]](#footnote-144), justifying the use of torture in TBS’s.

Furthermore, considering the effects of torture on society, the law would have to reach a point of dehumanising suspects for interrogators to comfortably torture for information, as seen in Abu Ghraib[[145]](#footnote-145). Causing the ethics of the legal system to be degenerated, to such a point, where even an innocent man can be falsely accused of terrorism and, now, is dehumanised and degraded with torture, as a result. The El Masri case[[146]](#footnote-146) reflects this, as Masri was detained without charge for 23 days, under the false suspicion that he was a member of Al-Qaida, however, the ECtHR, later, found his innocence, but, not before his rights were violated, with torture in an attempt to obtain information. Too quickly resulting in, innocent people, especially of a minority background[[147]](#footnote-147), being wrongfully accused of terrorism and tortured by the state.

Statman also added that torture could ‘lead to retaliated-terrorism by the victim and their comrades’[[148]](#footnote-148), pushing those who have been wrongfully tortured towards terrorism, as a form of retaliation against states. Although, there is little evidence to prove this, this argument was explored further in the case of ‘Jihadi John’, who, arguably, was ‘harassed’ by the state beforehand, leading him to terrorism[[149]](#footnote-149). Nevertheless, Kant agrees with Statemen, arguing that ‘no state…should permit such acts of hostility…[as] mutual confidence becomes impossible, during a time of peace’[[150]](#footnote-150). Illustrating that torture could have drastic macro-scale effects, building resentment towards countries that have subjected them to torture. Resulting, ‘[in] an emergence from the torturee…stronger, more cohesive, both as individuals and as a group’[[151]](#footnote-151) susceptible to terrorist propaganda. Perry discusses how the Israeli Intifada lead to this outcome, creating such a strong desire for retaliation against Israeli authorities, for their unjust detention, torture and death of family members[[152]](#footnote-152).

**Abu Ghraib:**

The American rendition detention camp, Abu Ghraib, is a famous and useful case study indicating how state-sanctioned torture could lead to a slippery slope.

The USA Patriot’s Act[[153]](#footnote-153) granted interrogators with far reaching anti-terrorist powers, limited at torture, to investigate and adequately prepare the state in their war against terror. These techniques were implemented in Guantanamo Bay under very controlled conditions, however, became very problematic, when they migrated their camp to Abu Ghraib, Iraq[[154]](#footnote-154). There, the limitations became blurred, resulting in the most abhorrent and dehumanizing treatment experienced by detainees[[155]](#footnote-155), with no goal in mind as they were tortured without interrogation. Resembling something like the Zimbardo experiment[[156]](#footnote-156), Secretary Rumsfeld stated that it began with ‘…only those he believed, there was a prospect of gathering intelligence from, that can save peoples lives’, then turning ‘…into sadistic, blatant and wanton criminal abuse of ordinary security detainees in occupied Iraq’[[157]](#footnote-157). Justifying the argument that a judicial warrant for torture, no matter what limits are placed on it, not unlike the Patriots Act, cannot prevent the extreme abuse of power, inhumane and degrading treatment, detainees will receive from, even the most, trained national security operatives and interrogators. We risk producing the same outcome, by legalising torture.

The Patriot’s Act fell short of giving the power of torture to interrogators, however, this did not prevent interrogators from overstepping their boundaries, which is just as likely to happen, but worse, as we would have legalised it and given them immunity. Yugal finishes off by adding that ‘those arguing that slippery slope is unavoidable once torture is introduced…can be reassured that their case has been proven’[[158]](#footnote-158).

**Model of Torture: Israeli Landau Model:**

As this dissertation discusses why JT should not be reinstated, it is important to investigate and assess the advantages and disadvantages of models of torture to identify whether the UK should create its own torture warrant and implement it, or if we are better suited without one.

Using the same description of a torture warrant as the one used in Part 1, *Historical perspectives*, above, Parry argues in favour of having a torture warrant, as it can, firstly, bring the torture inevitably used by the state in secrecy to task if it goes beyond the limit of necessity, and secondly, interrogators would be able to receive the proper training they need to extract confessions and details of impending attacks in an effective and efficient way that can save lives[[159]](#footnote-159).

Vermule supports a torture warrant in extenuating circumstances, where interrogators can use approved methods of torture to save lives, all whilst, relying on the defence of necessity[[160]](#footnote-160) to provide them with the legal immunity they need. This creates circumstances that exempt the interrogator from criminalisation if they, deduce from experience and expertise, that torture is the only course of action to take, pursues this course, and saves the lives of hundreds of people[[161]](#footnote-161). Parry would consider them with the same regard as a ‘war hero’[[162]](#footnote-162).

Whereas, anti-torture supporters, argue that it is a discredited method, which leads to a slippery slope and a deterioration of social, moral and legal values, which, at worst, could result in retaliated terrorism, undermining the objective of state security. The Abu Ghraib case study shows, that even trained operatives found a way to abuse the ‘sanctioned-but-limited’ authority to torture they had, indicating that the slipper-slope is inevitable[[163]](#footnote-163). Moreover, no protection is provided in this model for the El Masri’s, Jean’s and Monke’s of the world, who were abused and sustained life-altering injuries, only for some of them to receive compensation in return.

One of the first torture models to be applied in a democratic state is the Landau Israeli torture model, which received mostly criticism from the international community for their justification of torture[[164]](#footnote-164), however, like Vermule, the defence of necessity was used to justify inflicting torture on suspects to prevent attacks or obtain confessions, all monitored and regulated by the Landau Commission[[165]](#footnote-165). Outwardly, it appears as a well-established and balanced infra-structure that allows the objective to be reached without compromising the integrity of the legal system. However, the Landau commission found that interrogators did systematically try to obtain ‘false confessions’[[166]](#footnote-166), by feeding the information to suspects being torturing and forcing them to repeat it as their confession and providing ‘false testimonies’ in court, claiming that they did not use excessive force when, in actual fact, they did, all whilst, relying on the ‘shroud of secrecy’ and defence of necessity to provide anonymity and immunity from the law[[167]](#footnote-167). Lending legitimacy to the argument that, a model of torture regulated by the court and commissions, will ultimately, despite any efforts to prevent, become a tool used to abuse and oppress people with no accountability[[168]](#footnote-168). In relation to the question of, whether the UK should reinstate judicial torture, based on the Landau model exhibiting how a torture model can be abused, I conclude that a model of torture should not exist in the UK.

**Conclusion:**

To revisit the thesis question again, should it continue to remain impermissible for the UK to use torture, as a means of obtaining information from suspected criminals? A direct answer would be, yes, it should continue to remain impermissible.

When we consider the work in Part 1, historical perspective, the discussion there leans in favour of the thesis question, as it cites historical research and cases to portray the ineffectiveness of torture as a method to obtaining information, with Voltaire using the case of Jean to indicate this, or Geary discussing how torture being inflicted on a suspect is likely to produce inaccurate information, or Major General citing torture as a method ‘contrary to reason and humanity’. Further coupled with, the revelation that, it may not be a part of the royal prerogative and, although, was used in England, it never constituted an important aspect of evidential law, therefore, there is no rational reason, nor, traditional one to implement torture into the law today. This view is neatly encompassed by Lord Coke’s statement that, ‘‘there is no law [and has never been one] to warrant torture in this land, nor can they be justified by any prescription being so lately brought in’.

When we considering the work in Part 2, legal perspective, the law and courts, both national and international, is unwavering in its stance that torture is absolutely illegal not matter the circumstances[[169]](#footnote-169) . However, the formative exceptions which ‘excuse or justify’ state torture in s134 of CJA or in Art1.1, creates grey area which complicates the topic, by providing enough of a loophole that the state would never be able to formatively legislate it, but would be able to defend its use of torture based on these exceptions. As a result, international and national law should be reformed to exclude any exceptions, and accurately reflect their ‘prohibition of torture’ stance. Nevertheless, torture is unlikely to ever be legally accepted, even in TBS’s. Lastly, part 3, theoretical perspective, discusses the various theoretical arguments in favour of and against the reinstatement of torture. However, concludes that even states that have a working model of torture, with a court and commission to regulate it, like the Landau model, falls easily into the unavoidable and inescapable slippery slope, which according to Statman and Perry, has drastic social impact and is likely to cause more harm than good, therefore, should continue to remain illegal.

This topic of discussion proved itself to be an interesting and multi-faceted research topic, which, as of the last two decades, has become a provocative and charged topic of debate, so much so, it generated enough of an interest, in me, to compose this dissertation. However, arguably, rather pointless, as, despite its illegalisation, torture is still used by officials to extract information or confessions, therefore, is there any relevance in examining this topic? I would argue, yes, because using it in secret, at least, indicates an understanding of, firstly, its abhorrence and, secondly, sets the precedent that when these states are challenged legally, the law stands on the side of the victim, not the state[[170]](#footnote-170) .

**Bibliography**

**Primary:**

**Statutes**

1. Criminal Justice Act 2003, s134 (4)

2. English Bill of Rights 1689

3. European Convention of Human Rights 1950 , Article 3

4. European Convention of Human Rights, Article 6

5. Geneva Convention 1949

6. Human Rights Act 1998, s3

7. International Covenant on Civil and Political Rights, Article 7, Part 3.

8. Police and Criminal Evidence Act 1984, s76(2)a

9. Universal Declaration of Human Rights 1948, Article 5.

**Cases**

1. A and Ors v Secretary of State for the Home Department (No 2) [2005] UKHL 71

2. A and others v Secretary of State for Home Department [2004] UKHL 56

3. Abdelmalek v Algeria CAT/C/52/D/402/2009

4. Ali Aarass v Morocco CAT/C/52/D/447/2011

5. Chahal v United Kingdom [1996] 23 EHRR 413

6. Committee against torture v State of Israel H.C.5100/94 (1999)

7. El-Masri v Macedonia (App. 39630/09)

8. Gafgen v Germany (App. No. 22978/05)

9. Garcia Ruiz v Spain (App No 30544/96)

10. Heaney v Ireland (Application no. 34720/97).

11. Jalloh v Germany [2006] ECHR 721

12. Kitenge v Democratic Republic of Congo CCPR/C/110/D/1890/2009

13. McMartin v. County of Los Angeles (1988) 202 Cal. App. 3d 853

14. Omar Othman (Abu Qatada) V Secretary of state [2008] EWCA Civ. 290

15. Pinochet [1998] UKHL 41

16. RB and Another v Secretary of State for the Home Department; OO (Jordan) v Same; MT (Algeria) v Same [2009] UKHL 10.

17. Republic of Ireland v The United Kingdom [1978] ECHR 1.

18. Rochin v California (1952) 342 US 165.

19. Ron Jones v Saudi Arabia [2006] 2 WLR 1424

20. Selmouni v France 00025803/94

21. Songi v Canada CAT/C/39/D/297/2006, para 6.14

22. Tomasi v France (12850/87) (1992) 15 EHRR 1

23. Tomasi v France (App no 12850/87)

24. Yuzepchuk v Belarus CCPR/C/112/D/1906/2009

**Secondary:**

**Books**

1. Aldridge A., Voltaire and the Century of Light (first published 2015, Princeton University Press) 134

2. Andrews W., Medieval Punishments (first published 2013, Skyhorse Publishing, Inc.)320

3. Baccaria C., An essay on Crime and Punishments (first published 1767, J Almon) 161-170

4. Bagaric M & Clarke J, Torture: When is the Unthinkable Morally Permissible (first published 2007, State University of New York Press) p.vii.

5. Bentham J., Means of Extraction for Extraordinary Occasions (first published 1839, W. Tait) 12.

6. Bien D., The Calas Affair (first published 1960, Princeton University Press) 23-47

7. Borum R., Interview and interrogation: a perspective and update from the USA’ (first published 2013, Routledge) 123

8. Dershowitz A., Torture Reasoning in S Levinson Torture: A Collection (first published 2004, OUP) 257-280

9. Dershowitz A., Why Terrorism Works (first published 2012, The New Republic) 21

10. Franklin, The Science of Conjecture: Evidence and Probability Before Pascal.(first published 2001, Baltimore: JHUP) 26-30

11. Geary P. and Karras, Law and the Illicit in Medieval Europe(first published 2008, University of Pennsylvania Press 2013)80

12. Ginbar Y., Why not torture terrorists? Moral, Practical and Legal perspectives (first published 2008, OUP) 4-27

13. Janin H., Medieval Justice: Cases and Laws in France and England (first published 2009, McFarland) 231

14. Jardine D., A Reading on the Use of Torture in the Criminal Law of England Previously to the Common Wealth (first published 1837, Baldwin and Cradock) 37

15. Langbein J, Torture and the Law of Proof (first published 2006, University of Chicago Press) 4

16. Larteguy J., The Centurions (first published 2015, Penguin)

17. Lyons D, Forms and Limits of Utilitarianism(first published 1965, Clarendon Press)p.vii

18. Morris E, Standard Operating Procedure: Inside Abi Ghraib (first published 2012, Pan Macmillan) 34

19. Nowak M., Elizabeth McArthur, The United Nations Convention Against Torture: A commentary (first published 2008, OUP) 268

20. Rejali D., Torture and Democracy (first published 2009, Princeton University Press) 668;

21. Scott, The History of torture (first published 201, Routledge) 256

22. Sifris, Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture. (first published 2013, Routledge). p. 145.

23. Walzer M., ‘Political Action: The Problem of Dirty Hands’ (first published 2006, OUP) 66

24. Webb S., A History of Torture in Britain (first published 2019, Sword Books Limited) 33

25. Wisnewski J., Understanding torture (first published 2010, Edinburgh University Press) 223

26. Zimbardo P., The Lucifer Effect: Understanding How Good People Turn Evil (first published 2008, Random House) 3-6

**Journal Articles**

1. Bates E., ‘The Al-Adsani Case, State Immunity and the International Legal Prohibition on Torture’ (2003) 193 (3) HeinOnline https://heinonline.org/HOL/LandingPage?handle=hein.journals/hrlr3&div=17&id=&page= accessed 25 March 2020

2. Belvisi F.,’The Ticking Bomb Scenario as a moral scandal [2009] Studies on Political Sociology 69

3. Garven, ‘Theory, “The effect of interviewing techniques from the McMartin Preschool case.’ [1998] American Psychological Association 347

4. Gaskarth J. , ‘The UK’s complicity in torture in the global war on terrorism’ (2011) 187 International Affairs 945-964

5. Giuffré M. , ‘An Appraisal of Diplomatic Assurances One Year after Othman (Abu Qatada) v United Kingdom’(2012) 2(2) International Human Rights Law Review 266,293

6. Glancy J., ‘Torture: Flesh, Truth, and the Fourth Gospel’ [2005] 13(2) Brill < https://brill.com/view/journals/bi/13/2/article-p107\_1.xml> accessed 25 March 2020

7. Greer S., ‘Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really ‘Absolute’ in International Human Rights Law?’ (2015) 15(1) Human Rights Review 101,137

8. Grozdanova R., ‘The UK and Diplomatic Assurance: A minimalist Approach towards the anti-torture norm ’ [2015] International Criminal Law Review 369

9. Jones O., ‘Jones v Ministry of Interior of Kingdom of Saudi Arabia: An exercise in interpretation’(2007) 175 Singapore Yearbook of International Law and Contributors 163,175

10. Martin OV., ‘ An Evaluation of the Use of Memorandums of Understanding in the Removal of Terror Suspects and the Prohibition against Non-Refoulment’ (2007) < https://heinonline.org/HOL/LandingPage?handle=hein.journals/hiblj7&div=7&id=&page= >accessed 25 March 2020

11. Parry, ‘Torture warrants and the Rule of Law’ [2008] Albany Law Review 885

12. PHR Toolkits, ‘Prohibition of torture in International Law’ (PHR Toolkits, 1 May 2010) < http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-1-international-legal-standards-overview/torture/prohibition-of-torture-in-international-law/ > accessed 26 March 2020

13. Posner R.,‘The New Republic’ [1986] Harvard Law Review 44

**Government Reports:**

1. Horne A. and Gower M., ‘Deportation of individuals who may face a risk of torture ’ [2012] House of Commons, Home Affairs Section 1-5

**Encyclopaedia:**

1. Catholic Encyclopaedia (5th edn, 1913) vol31, para 61.

**Websites:**

1. Amnesty International, ‘Torture Feeds off Discrimination’ (Amnesty International, 18 October 2000) < https://www.amnesty.org.uk/press-releases/torture-feeds-discrimination> accessed 25 March 2020
2. Equality Human Rights, ‘Article 3: freedom from torture and inhumane treatment’ (Equality 2008)<https://www.equalityhumanrights.com/en/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment> accessed 25th March 2020
3. Liberty, ‘Torture Inquiry’ (Liberty, 1 May 2009) < https://www.libertyhumanrights.org.uk/fundamental/torture-inquiry/> accessed 25 March 2020.
4. Redress, ‘UK courts rule torture ‘evidence’ is admissible’ (Redress, 1 May 2004) < https://redress.org/news/uk-courts-rule-torture-evidence-is-admissible/> accessed 25 March 2020
5. Smet S., ‘ Gäfgen v. Germany: threat of torture to save a life?’(Strasbourg Observer, 6 July 2010) < https://strasbourgobservers.com/2010/07/06/389/> accessed 26 March 2020

**Newspaper articles:**

1. BBC News, ‘’Jihadi John’ UK harassment claims revealed in emails’ (BBC NEWS London, 26 February 2015) < https://www.bbc.co.uk/news/uk-31647271> accessed 25th March 2020.
2. Froomkin D., ‘Does Torture Work’ The Economist (New York, 27th Jan 2009) 3
3. Hall R., ‘US soldier who abused prisoners at Abu Ghraib refuses to apologise for her actions ’(The Independent, 21 March 2012) < https://www.independent.co.uk/news/world/middle-east/us-soldier-who-abused-prisoners-at-abu-ghraib-refuses-to-apologise-for-her-actions-7579422.html> accessed 25 March 2020.

1. John Langbein, Torture and the Law of Proof (first published 2006, University of Chicago Press) 4 [↑](#footnote-ref-1)
2. Liberty, ‘Torture Inquiry’ (Liberty, 1 May 2009) < https://www.libertyhumanrights.org.uk/fundamental/torture-inquiry/> accessed 25 March 2020. [↑](#footnote-ref-2)
3. John Langbein, Torture and the Law of Proof (first published 2012, University of Chicago Press) 6-9 [↑](#footnote-ref-3)
4. Ibid, ‘with the use of a papal bull Ad Extirpanda’ as the method of torture. [↑](#footnote-ref-4)
5. Ibid, quoted at The Roman Theological Forum. [↑](#footnote-ref-5)
6. Ibid 21 [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Patrick Geary and Karras, Law and the Illicit in Medieval Europe(first published 2008, University of Pennsylvania Press 2013)80 [↑](#footnote-ref-9)
10. Jennifer Glancy, ‘Torture: Flesh, Truth, and the Fourth Gospel’ [2005] 13(2) Brill < <https://brill.com/view/journals/bi/13/2/article-p107_1.xml>> accessed 25 March 2020 [↑](#footnote-ref-10)
11. Ibid 107 [↑](#footnote-ref-11)
12. Ibid [↑](#footnote-ref-12)
13. Ibid [↑](#footnote-ref-13)
14. Ibid ‘the Lord did not order to return evil with evil’. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. Franklin, The Science of Conjecture: Evidence and Probability Before Pascal.(first published 2001, Baltimore: JHUP) 26-30 [↑](#footnote-ref-16)
17. Geary and Karras, Law and the Illicit in Medieval Europe (first published 2008, University of Pennsylvania Press 2008). p.123 [↑](#footnote-ref-17)
18. Simon Webb, A History of Torture in Britain (first published 2019, Sword Books Limited) 33 [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. Catholic Encyclopaedia (5th edn, 1913) vol31, para 61. [↑](#footnote-ref-20)
21. Ibid 43 [↑](#footnote-ref-21)
22. Darius Rejali, Torture and Democracy (first published 2009, Princeton University Press) 668;

    Scott, The History of torture (first published 201, Routledge) 256 [↑](#footnote-ref-22)
23. McMartin v. County of Los Angeles (1988) 202 Cal. App. 3d 853 [↑](#footnote-ref-23)
24. Garven, ‘Theory, “The effect of interviewing techniques from the McMartin Preschool case.’ [1998] American Psychological Association 347 [↑](#footnote-ref-24)
25. William Andrews, Medieval Punishments (first published 2013, Skyhorse Publishing, Inc.)320 [↑](#footnote-ref-25)
26. Hunt Janin, Medieval Justice: Cases and Laws in France and England (first published 2009, McFarland) 231 [↑](#footnote-ref-26)
27. Jeremy Wisnewski, Understanding torture (first published 2010, Edinburgh University Press) 223 [↑](#footnote-ref-27)
28. David Bien, The Calas Affair (first published 1960, Princeton University Press) 23-47 [↑](#footnote-ref-28)
29. ibid [↑](#footnote-ref-29)
30. Ibid 122 [↑](#footnote-ref-30)
31. Ibid. [↑](#footnote-ref-31)
32. Ibid 34 [↑](#footnote-ref-32)
33. English Bill of Rights 1689 [↑](#footnote-ref-33)
34. Alfred Aldridge, Voltaire and the Century of Light (first published 2015, Princeton University Press) 134 [↑](#footnote-ref-34)
35. Ibid [↑](#footnote-ref-35)
36. Cesare di Baccaria, An essay on Crime and Punishments (first published 1767, J Almon) 161-170 [↑](#footnote-ref-36)
37. Ibid [↑](#footnote-ref-37)
38. Ibid [↑](#footnote-ref-38)
39. Ibid 122 [↑](#footnote-ref-39)
40. Ibid 124 [↑](#footnote-ref-40)
41. Ibid [↑](#footnote-ref-41)
42. Ibid 49 [↑](#footnote-ref-42)
43. David Jardine, A Reading on the Use of Torture in the Criminal Law of England Previously to the Common Wealth (first published 1837, Baldwin and Cradock) 37 [↑](#footnote-ref-43)
44. ibid [↑](#footnote-ref-44)
45. John Langbein, Torture and the Law of Proof (first published 2012, University of Chicago Press) 36 [↑](#footnote-ref-45)
46. Ibid 57 [↑](#footnote-ref-46)
47. Ibid 58 [↑](#footnote-ref-47)
48. Ibid [↑](#footnote-ref-48)
49. Ibid 53 [↑](#footnote-ref-49)
50. Ibid [↑](#footnote-ref-50)
51. Criminal Justice Act 2003, s134 [↑](#footnote-ref-51)
52. Police and Criminal Evidence Act 1984, s76(2)a [↑](#footnote-ref-52)
53. Rumyana Grozdanova, ‘The UK and Diplomatic Assurance: A minimalist Approach towards the anti-torture norm ’ [2015] International Criminal Law Review 369 [↑](#footnote-ref-53)
54. Human Rights Act 1998, s3 [↑](#footnote-ref-54)
55. Ed Bates, ‘The Al-Adsani Case, State Immunity and the International Legal Prohibition on Torture’ (2003)

    193 (3) HeinOnline [https://heinonline.org/HOL/LandingPage?handle=hein.journals/hrlr3&div=17&id=&page=](https://heinonline.org/HOL/LandingPage?handle=hein.journals/hrlr3&div=17&id=&page=%20)  accessed 25 March 2020 [↑](#footnote-ref-55)
56. Omar Othman (Abu Qatada) V Secretary of state [2008] EWCA Civ. 290 [↑](#footnote-ref-56)
57. Equality Human Rights, ‘Article 3: freedom from torture and inhumane treatment’ (Equality 2008)<<https://www.equalityhumanrights.com/en/human-rights-act/article-3-freedom-torture-and-inhuman-or-degrading-treatment>> accessed 25th March 2020 [↑](#footnote-ref-57)
58. [1996] 23 EHRR 413 [↑](#footnote-ref-58)
59. Alexander Horne and Melanie Gower, ‘Deportation of individuals who may face a risk of torture ’ [2012] House of Commons, Home Affairs Section 1-5 [↑](#footnote-ref-59)
60. [1998] UKHL 41 [↑](#footnote-ref-60)
61. [2006] 2 WLR 1424 [↑](#footnote-ref-61)
62. Oliver Jones, ‘Jones v Ministry of Interior of Kingdom of Saudi Arabia: An exercise in interpretation’(2007) 175 Singapore Yearbook of International Law and Contributors 163,175 [↑](#footnote-ref-62)
63. CJA 2003, s134 (4) [↑](#footnote-ref-63)
64. The meaning of “lawful authority, justification or excuse” is described in the statute, under (a), (b), (i), (ii).

    [↑](#footnote-ref-64)
65. Steven Greer, ‘Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really ‘Absolute’ in International Human Rights Law?’ (2015) 15(1) Human Rights Review 101,137 [↑](#footnote-ref-65)
66. Ibid

    [↑](#footnote-ref-66)
67. Ibid.Nuremberg Trials, where Nazi soldiers were just ‘following orders’. [↑](#footnote-ref-67)
68. Mariagiulia Giuffré , ‘An Appraisal of Diplomatic Assurances One Year after Othman (Abu Qatada) v United Kingdom’(2012) 2(2) International Human Rights Law Review 266,293 [↑](#footnote-ref-68)
69. Ibid [↑](#footnote-ref-69)
70. Ibid [↑](#footnote-ref-70)
71. [2004] UKHL 56 [↑](#footnote-ref-71)
72. (No 2) [2005] UKHL 71 [↑](#footnote-ref-72)
73. Redress, ‘UK courts rule torture ‘evidence’ is admissible’ (Redress, 1 May 2004) < https://redress.org/news/uk-courts-rule-torture-evidence-is-admissible/> accessed 25 March 2020

    [↑](#footnote-ref-73)
74. Orla Veale Martin, ‘ An Evaluation of the Use of Memorandums of Understanding in the Removal of Terror Suspects and the Prohibition against Non-Refoulment’ (2007) < https://heinonline.org/HOL/LandingPage?handle=hein.journals/hiblj7&div=7&id=&page= >accessed 25 March 2020 [↑](#footnote-ref-74)
75. RB and Another v Secretary of State for the Home Department; OO (Jordan) v Same; MT (Algeria) v Same [2009] UKHL 10. [↑](#footnote-ref-75)
76. ibid [↑](#footnote-ref-76)
77. European Convention of Human Rights 1950 , Article 3 [↑](#footnote-ref-77)
78. Universal Declaration of Human Rights 1948, Article 5. [↑](#footnote-ref-78)
79. International Covenant on Civil and Political Rights, Article 7, Part 3. [↑](#footnote-ref-79)
80. Kitenge v Democratic Republic of Congo CCPR/C/110/D/1890/2009 and General Comment of the Human Rights Committee, no. 20 (1992) [3], Art10, UNCAT. [↑](#footnote-ref-80)
81. Geneva Convention 1949 [↑](#footnote-ref-81)
82. Tomasi v France (12850/87) (1992) 15 EHRR 1, terrorism cannot justify the torture. [↑](#footnote-ref-82)
83. Manfred Nowak, Elizabeth McArthur, The United Nations Convention Against Torture: A commentary (first published 2008, OUP) 268 [↑](#footnote-ref-83)
84. CCPR/C/112/D/1906/2009 [↑](#footnote-ref-84)
85. CCPR/C/110/D/1890/2009 [↑](#footnote-ref-85)
86. Songi v Canada CAT/C/39/D/297/2006, para 6.14 [↑](#footnote-ref-86)
87. European Convention of Human Rights, Art6: right to a fair trial. Heaney v Ireland (Application no. 34720/97). [↑](#footnote-ref-87)
88. PHR Toolkits, ‘Prohibition of torture in International Law’ (PHR Toolkits, 1 May 2010) < http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-1-international-legal-standards-overview/torture/prohibition-of-torture-in-international-law/ > accessed 26 March 2020

    Abdelmalek v Algeria CAT/C/52/D/402/2009 and Ali Aarass v Morocco CAT/C/52/D/447/2011 [↑](#footnote-ref-88)
89. Garcia Ruiz v Spain (App No 30544/96) [↑](#footnote-ref-89)
90. Ibid, ‘[torture] not including pain or suffering arising only from, inherent in, or in incidental to, lawful sanctions.’ [↑](#footnote-ref-90)
91. Sifris, Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture. (first published 2013, Routledge). p. 145. [↑](#footnote-ref-91)
92. Ibid [↑](#footnote-ref-92)
93. As to whether it falls into ‘lawful sanctions’. [↑](#footnote-ref-93)
94. [2006] ECHR 721 [↑](#footnote-ref-94)
95. Also, Selmouni v France 00025803/94, where the harm inflicted on Selmouni was found to constitute torture, under Art3. [↑](#footnote-ref-95)
96. [1978] ECHR 1. [↑](#footnote-ref-96)
97. Ibid. Article 15 gives those states a wide margin of appreciation [↑](#footnote-ref-97)
98. Ibid. former Prime Minister, Theresa May, argued this in relation to the ECHR in Abu Qatada case. [↑](#footnote-ref-98)
99. Ibid. According to Government’s Intelligence and Security Committee report 2018, he was tortured by MI6 for his alleged involvement in 9/11, but later found that he was not involved, resulting in, former Prime Minister Theresa May issuing a public apology for the appalling treatment and compensation. [↑](#footnote-ref-99)
100. CCPR/C/112/D/1906/2009 [↑](#footnote-ref-100)
101. CCPR/C/110/D/1890/2009 [↑](#footnote-ref-101)
102. Gafgen and Tomasi v France (App no 12850/87), both prohibiting its use, regardless of ‘state sanctions’, absolutely. [↑](#footnote-ref-102)
103. Considering freedom fighters, like Mandela, a terrorist at one point. [↑](#footnote-ref-103)
104. Yuval Ginbar, Why not torture terrorists? Moral, Practical and Legal perspectives (first published 2008, OUP) 4-27 [↑](#footnote-ref-104)
105. Ibid 234. According to ‘Nowak, Special Rapporteur on Torture for the UN, confessions is the most common reason that torture would be used.’

     [↑](#footnote-ref-105)
106. Rochin v California (1952) 342 US 165. [↑](#footnote-ref-106)
107. Dershowitz, Torture Reasoning in S Levinson Torture: A Collection (first published 2004, OUP) 257-280 [↑](#footnote-ref-107)
108. See Abdul Hakim Belhaj. [↑](#footnote-ref-108)
109. Jeremy Bentham, Means of Extraction for Extraordinary Occasions (first published 1839, W. Tait) 12. [↑](#footnote-ref-109)
110. Jean Larteguy, The Centurions (first published 2015, Penguin) [↑](#footnote-ref-110)
111. Lyons D, Forms and Limits of Utilitarianism(Clarendon Press 1965)p.vii, act utilitarian’s argue ‘if a majority of people will be harmed by not acting, then the act is justifiable and should be carried out’. [↑](#footnote-ref-111)
112. Francesco Belvisi,’The Ticking Bomb Scenario as a moral scandal [2009] Studies on Political Sociology 69 [↑](#footnote-ref-112)
113. ibid [↑](#footnote-ref-113)
114. Richard Posner,‘The New Republic’ [1986] Harvard Law Review 44 [↑](#footnote-ref-114)
115. ibid [↑](#footnote-ref-115)
116. Ibid. 42 [↑](#footnote-ref-116)
117. Ibid. 52 [↑](#footnote-ref-117)
118. Alan Dershowitz, Why Terrorism Works (first published 2012, The New Republic) 21 [↑](#footnote-ref-118)
119. Bagaric M & Clarke J, Torture: When is the Unthinkable Morally Permissible (first published 2007, State University of New York Press) p.vii. ibid. Israeli Court Judge, Heshin, states that ‘this is the most extreme immoral position I have ever heard, a thousand people are about to die, and propose to do nothing’.

     [↑](#footnote-ref-119)
120. ibid [↑](#footnote-ref-120)
121. Michael Walzer, ‘Political Action: The Problem of Dirty Hands’ (first published 2006, OUP) 66 [↑](#footnote-ref-121)
122. ibid [↑](#footnote-ref-122)
123. Ibid. 95 [↑](#footnote-ref-123)
124. Ibid. [↑](#footnote-ref-124)
125. Ibid. ‘Buckler ‘there may be some evils with which we simply cannot accept no matter wat the collective benefit or risk of non-collusion is’ [↑](#footnote-ref-125)
126. Parry, ‘Torture warrants and the Rule of Law’ [2008] Albany Law Review 885 ‘Torture… part of the fabric of modern legal and political life’, [↑](#footnote-ref-126)
127. Ibid. Garett argues that citizens have a duty to place limits on leader’s conduct. [↑](#footnote-ref-127)
128. Ibid 66. [↑](#footnote-ref-128)
129. Ibid. ‘…every authority deals with a specific area…which it has expertise, this places the authority’s personnel in a… different position…being prepared for the situation’ [↑](#footnote-ref-129)
130. Ibid. ‘America learned the truth of how 9/11 was organised because a detainee had come to trust his captors after they treated him humanely.’ [↑](#footnote-ref-130)
131. ibid [↑](#footnote-ref-131)
132. ibid [↑](#footnote-ref-132)
133. Ibid, Head of the Interrogation in Israel stated, ‘I took part in building a method of interrogation that involves reasonable pressure [but] today, I’m disgusted by it. Nobody touched a prisoner when I was head’. [↑](#footnote-ref-133)
134. ibid [↑](#footnote-ref-134)
135. Jamie Gaskarth , ‘The UK’s complicity in torture in the global war on terrorism’ (2011) 187 International Affairs 945-964 [↑](#footnote-ref-135)
136. Dan Froomkin, ‘Does Torture Work’ The Economist (New York, 27th Jan 2009) 3 [↑](#footnote-ref-136)
137. Ibid, ‘terrorists want to force us to give up our own universal values of pluralistic democracy, human rights and the rule of law’ [↑](#footnote-ref-137)
138. Ibid [↑](#footnote-ref-138)
139. Gafgen v Germany (App. No. 22978/05) [↑](#footnote-ref-139)
140. Stijn Smet, ‘ Gäfgen v. Germany: threat of torture to save a life?’(Strasbourg Observer, 6 July 2010) < https://strasbourgobservers.com/2010/07/06/389/> accessed 26 March 2020 [↑](#footnote-ref-140)
141. Ibid. [↑](#footnote-ref-141)
142. Randy Borum, Interview and interrogation: a perspective and update from the USA’ (first published 2013, Routledge) 123 [↑](#footnote-ref-142)
143. Yuval Ginbar, Why not torture terrorists? Moral, Practical and Legal perspectives (first published 2008, OUP) 45 [↑](#footnote-ref-143)
144. Ibid. [↑](#footnote-ref-144)
145. Ibid.56 [↑](#footnote-ref-145)
146. El-Masri v Macedonia (App. 39630/09)

     [↑](#footnote-ref-146)
147. Amnesty International, ‘Torture Feeds off Discrimination’ (Amnesty International, 18 October 2000) < https://www.amnesty.org.uk/press-releases/torture-feeds-discrimination> accessed 25 March 2020 ‘Amnesty international…showed…how torture, prejudice and discrimination are…inextricable interlinked’. [↑](#footnote-ref-147)
148. Ibid. 64 [↑](#footnote-ref-148)
149. BBC News, ‘’Jihadi John’ UK harassment claims revealed in emails’ (BBC NEWS London, 26 February 2015) < <https://www.bbc.co.uk/news/uk-31647271>> accessed 25th March 2020. Also, statement in The Guardian’s paper agreeing with this. [↑](#footnote-ref-149)
150. Ibid. [↑](#footnote-ref-150)
151. Ibid. [↑](#footnote-ref-151)
152. Ibid. [↑](#footnote-ref-152)
153. Patriot Act 2001 [↑](#footnote-ref-153)
154. Errol Morris, Standard Operating Procedure: Inside Abi Ghraib (first published 2012, Pan Macmillan) 34 [↑](#footnote-ref-154)
155. Richard Hall, ‘US soldier who abused prisoners at Abu Ghraib refuses to apologise for her actions ’

     (The Independent, 21 March 2012) < https://www.independent.co.uk/news/world/middle-east/us-soldier-who-abused-prisoners-at-abu-ghraib-refuses-to-apologise-for-her-actions-7579422.html> accessed 25 March 2020. Showing Images of security guards electrocuting detainees, putting a dog leash around their neck and dragging them across the ground and placing them on top of each other naked whilst a guard sits on top of them. [↑](#footnote-ref-155)
156. Philip Zimbardo, The Lucifer Effect: Understanding How Good People Turn Evil (first published 2008, Random House) 3-6 [↑](#footnote-ref-156)
157. Yuval Ginbar, Why not torture terrorists? Moral, Practical and Legal perspectives (first published 2008, OUP) 60 [↑](#footnote-ref-157)
158. Ibid. [↑](#footnote-ref-158)
159. Ibid. [↑](#footnote-ref-159)
160. Ibid. Like the defence of necessity used in criminal law, but, absolves interrogators completely [↑](#footnote-ref-160)
161. Ibid. [↑](#footnote-ref-161)
162. Ibid. [↑](#footnote-ref-162)
163. Ibid. [↑](#footnote-ref-163)
164. Committee against torture v State of Israel H.C.5100/94 (1999) [↑](#footnote-ref-164)
165. Ibid. [↑](#footnote-ref-165)
166. Ibid. ‘the torture did not even secure a conviction or criminal charge, and GSS agents were charged only once for excessive use of force, although, it was systematic’ [↑](#footnote-ref-166)
167. Ibid. [↑](#footnote-ref-167)
168. Ibid. [↑](#footnote-ref-168)
169. Gafgen, and Tomasi case. [↑](#footnote-ref-169)
170. El masri case [↑](#footnote-ref-170)